

REMARKS

Claims 22-39 are pending in the present application. In the Office Action mailed May 2, 2007, the Examiner rejected claim 23 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner next rejected claims 33-37 under 35 U.S.C. §101 because they purport to claiming computer signals, which do not belong to any of the 4 enumerated statutory classes of invention. Claims 22, 24, 26-31, 33, 34, and 36-39 are rejected under 35 U.S.C. §102(e) as being unpatentable over Kennedy et al. (USP 6,963,847) in view of Kennedy et al. (USP 6,055,519). Claims 23, 32, and 35 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kennedy et al. '847 and Kennedy et al. '519 as applied to claims 22, 24, 26-31, 33, 34, and 36-39, and further in view of Khan (USP 6,507,766).

The Examiner rejected claim 23 under 35 U.S.C. §112, second paragraph, or stating that "Applicant fails to distinctly define the variables used in calculating the shipment quality metric of this claim." *Office Action, 5/02/07*, pg. 2. Applicant has amended claim 23 to distinctly define the variables. Accordingly, Applicant believes the amendments to claim 23 overcome the Examiner's rejection and requests withdrawal thereof.

The Examiner rejected claims 33-37 under 35 U.S.C. §101. However, the Examiner has not established all the requirements for making a §101 rejection as set forth in MPEP §2106.

According to MPEP §2106, the first step in determining whether a claim falls within the broad ambit of §101 is to determine "whether the claim falls within at least one of the four enumerated categories." The Examiner concluded that any signal claim per se does not fall within one of the four categories and ceased further inquiry. However, "the patentability analysis does not end there. USPTO personnel must further continue with the statutory subject matter analysis as set forth" in the remainder of MPEP §2106. *Id.* Since the Examiner indicated that signal claims are "natural phenomena," the Examiner must also show that the claims are not a practical application of a natural phenomena. MPEP § 2106 IV(C)2. The Examiner bears the burden of proving that the claims are not a practical application of a natural phenomena by showing that the claims do not recite a physical transformation or a useful, concrete, and tangible result. *MPEP §2106(IV)(C)2(1-2).*

Here, it is clear that claim 33 is useful, for example, in that it recites a number of steps and calculations performed in regard to data concerning an actual product production, including revenue calculations and shipping date comparisons. The Examiner has not challenged the utility of claim 33. *See MPEP §2106(IV)(C)2(2)(a).* Claim 33 has a tangible result at least due to the

recitation that the one or more processors are caused to “display, in a table, the total revenue and a proactive alert.” See *MPEP §2106(IV)(C)2(2)(b)*. Furthermore, claim 33 is also concrete in that its results are “substantially repeatable.” See *MPEP §2106(IV)(C)2(2)(c)*. Therefore, since the Examiner has not shown that claim 33 is not a practical application of a natural phenomena, the Examiner has not established that claim 33 recites non-statutory subject matter. Furthermore, since claim 33 is directed to a practical application of a 35 U.S.C. §101 judicial exception, claim 33 is eligible for patent protection.

Accordingly, Applicant requests withdrawal of the Examiner's rejection of claims 33-37 under 35 U.S.C. §101.

Next, the Examiner presented a heading for claim rejections under 35 U.S.C. §103(a). The Examiner then indicated that claims 22, 24, 26-31, 33, 34, and 36-39 are rejected under 35 U.S.C. §102(e), not §103(a). Initially, Applicant assumed that such indication was merely a typographical error and prepared to treat the rejection of these claims as if they were rejected under §103(a). However, while the rejections of independent claims 22 and 33 and follow a §103(a) format, independent claim 26 does not. In fact, of claims 26-32, only claim 28 is rejected using both Kennedy references. That is, claims 26-27 and 29-32 are rejected only under the Kennedy reference, not the Kennedy2 reference. Additionally, there was no attempt to show a motivation to combine the Kennedy references with regard to claims 26-27 and 29-32. Thus, the rejections of these claims appears to fit a rejection under §102(e) as the Examiner indicated rather than a rejection under §103(a). Accordingly, Applicant is confused as to the bases of rejection for claims 22, 24, 26-31, 33, 34, and 36-39. Applicant requests clarification thereof in a non-final Office Action to allow Applicant a chance to properly respond to the corrected rejections.

The Examiner apparently rejected claim 22 under §103(a), citing Kennedy ‘847 in combination with Kennedy ‘519 as teaching all elements of the claim. Applicant respectfully disagrees.

Claim 1 calls for automatically querying a database for production data for each order scheduled for production. Kennedy ‘847 “relates generally to the field of supply chain planning, and more particularly to a system and method for managing order fulfillment in a distributed supply chain planning environment.” *Col. 1, lns. 18-21*. Kennedy ‘847 teaches a fulfillment server 16 for managing available-to-promise (ATP) data receives an ATP request from a client. See *Abstract*. In response, the fulfillment server communicates an ATP request to a local fulfillment manager 14. *Id.* A component quotation 34 from the local fulfillment manager

is received by the fulfillment server. *Id.* the fulfillment server then generates and communicates a quotation that includes product availability information to the client. *Id.*

The Examiner cited the Abstract of Kennedy '847 as teaching automatically querying a database for production data for each order scheduled for production. According to the abstract, however, Kennedy '847 only quotations are communicated to the client. That is, rather than being directed to or disclosing production data for orders scheduled for production, Kennedy '847 is directed to quotation on product availability information. Product availability information is not tantamount to production data for orders scheduled for production.

As to the step of claim 22 reciting "automatically determining a shipment quality metric for all orders that have shipped," the Examiner cited Kennedy '847 at col. 14, lns. 55-60, col. 25, lns. 25-39 and col. 33, lns. 42-55. However, Kennedy '847 and Kennedy '519 relate to product ordering negotiations and information regarding manufacturing output that is "available to promise" or ATP. Kennedy '847, col. 2, lns. 25-31; Kennedy '519, col. 2, lns. 20-41. In this regard, Kennedy '847 includes a number of ATP servers 14 and Kennedy '519 includes a "negotiation engine" 16 and a scheduler 20 which assist users in coordinating the terms of **potential** orders. The citation to Col. 25, lns. 25-39 of Kennedy '847 discusses "delivery coordination" for planning distribution and delivery to customers, not measurement of orders which have already shipped. *See, e.g., Kennedy '847*, Col. 25, lns. 35-38 ("the delivery dates corresponding to the individual ATP requests 30 may be adjusted to reflect an optimized overall delivery plan") (emphasis added). That is, the cited section of Kennedy '847 discusses pre-shipment plans for orders which have not yet shipped.

The citation to col. 33, lns. 42-55 merely regards the archiving of data and does not teach or suggest determination of a shipment quality metric for all orders that have shipped, as claimed. *See Kennedy '847*, col. 33, lns. 51-61.

The Examiner stated that Kennedy '847 "teaches delivery details of an ATP request" that includes "ship complete, partial/cancel, or ship on-time (col. 14, lines 55-60)." *Office Action*, 5/2/07, pg. 11. The Examiner then states that "[a]t least the ship complete, partial/cancel, or ship on-time attributes clearly teach a way to measure (i.e. a metric) if a product has made it to its destination (i.e. ship complete attribute)." *Id.* However, the shipment information the Examiner cites does not refer to shipment information for orders that have shipped. As explained above, Kennedy '847 discloses quotations based on product availability information. Accordingly, an ATP request that includes shipment information does not include shipment information of orders that have shipped as called for in claim 1, but instead includes quotation information from buyer

to seller for protected shipment information should the quote be accepted between buyer and seller.

Likewise, claim 26 recites a computer caused to “determine a shipment quality metric for shipped orders.” As discussed above, Kennedy ‘847 and Kennedy ‘519 primarily regard order negotiations and do not teach or suggest the determination or display of shipment quality metrics for orders that have already shipped. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 22 and 26 and all claims depending therefrom.

With respect to claim 33, the Examiner stated that Kennedy ‘847 teaches periodically obtaining, from a database containing product production data, a projected revenue for each order and cited col. 30, lines 35-60. *See Office Action, 5/2/07, pg. 8.* However, the cited portion of Kennedy ‘847 discloses queuing an existing ATP request “with the intent of improving the quotation result.” *Col. 30, lns. 35-40.* The cited portion also discloses updating the status of each request line-item such that further processing of ATP requests is suspended. Nowhere in the cited portion is a projected revenue for each order periodically obtained from the database containing product production data.

Claim 33 also calls for calculation of a total revenue for the orders in production for each product category. The Examiner stated that such was taught in col. 17, lines 5-44 and col. 21, lines 40-45 of Kennedy ‘847. Applicant respectfully disagrees.

The cited portion in column 17 sets forth “an example of a multi-dimensional ATP server response” *Col. 17, lns. 4-5.* Column 17 of Kennedy ‘847 considers a given request line item and its corresponding response in the multi-dimensional quote. While the request line item and response example illustrates an example of a negotiation between a requester and a supplier, the example is merely a negotiation prior to performing any production on the requested items. Column 21, lines 40-45 of Kennedy ‘847 discuss quotation line-item attributes numbered 13 and 14, which correspond to an offered total price and a quotation line-item status, respectively. However, neither of these quotation line-item attributes equate to a projected revenue for each order. As explained above, Kennedy ‘847 and Kennedy ‘519 primarily regard order negotiations, not actual orders in production as called for in claim 33. Therefore, the art or record fails to teach each and every element has called for in claim 33. Accordingly, Applicant respectfully believes that claim 33 and all claims depending therefrom are patentably distinct from the art of record and requests withdrawal of the rejections thereof.

The Examiner rejected claims 23, 32, and 35 under 35 U.S.C. §103(a) as being unpatentable over Kennedy et al. ‘847, Kennedy ‘519, and further in view of Khan. Khan was

filed on October 25, 1999, and published on November 7, 2002. Since the publication date of Khan is less than one year before the filing date of the present application, August 1, 2003, Khan can only qualify as prior art under 35 U.S.C. § 102(e). However, since the present application and Khan were, at the time the invention was made, owned by, or subject to an obligation of assignment, to the same entity, Khan cannot be cited in a rejection against the claimed invention under 35 U.S.C. § 103(a). See MPEP § 706.02(I). Khan is assigned to General Electric Company and recorded at Reel/Frame # 010343/0689. The current application is also assigned to General Electric Company and recorded at Reel/Frame # 016212/0534. Applicant requests withdrawal of the rejection of claims 23, 32, and 35 under 35 U.S.C. § 103(a) as being unpatentable over Kennedy et al. '847, Kennedy '519, and further in view of Khan.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 22-39.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,

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Dated: August 2, 2007
Attorney Docket No.: GEMS8081.168

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General Authorization and Extension of Time

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 07-0845. Should no proper payment be enclosed herewith, as by credit card authorization being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 07-0845. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extensions under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 07-0845. Please consider this a general authorization to charge any fee that is due in this case, if not otherwise timely paid, to Deposit Account No. 07-0845.

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